



Indiana CVSO Training

Presumptive Conditions

Presumptive Condition

- §3.303
- (a) *General.* Service connection connotes many factors but basically it means that the facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred coincident with service in the Armed Forces, or if preexisting such service, was aggravated therein. This may be accomplished by affirmatively showing inception or aggravation during service or through the application of statutory presumptions. Each disabling condition shown by a veteran's service records, or for which he seeks a service connection must be considered on the basis of the places, types and circumstances of his service as shown by service records, the official history of each organization in which he served, his medical records and all pertinent medical and lay evidence. Determinations as to service connection will be based on review of the entire evidence of record, with due consideration to the policy of the Department of Veterans Affairs to administer the law under a broad and liberal interpretation consistent with the facts in each individual case.

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- The facts show by evidence that a disabling medical condition, or injury was caused by exposure to certain chemicals, or events in the armed service. Or a pre-existing condition was made worse by the same. And, these said conditions are listed as presumptive conditions based on the exposure.

Presumptive Condition

- (b) *Chronicity and continuity*. With chronic disease shown as such in service (or within the presumptive period under §3.307) so as to permit a finding of service connection, subsequent manifestations of the same chronic disease at any later date, however remote, are service connected, unless clearly attributable to intercurrent causes. This rule does not mean that any manifestation of joint pain, any abnormality of heart action or heart sounds, any urinary findings of casts, or any cough, in service will permit service connection of arthritis, disease of the heart, nephritis, or pulmonary disease, first shown as a clearcut clinical entity, at some later date. For the showing of chronic disease in service there is required a combination of manifestations sufficient to identify the disease entity, and sufficient observation to establish chronicity at the time, as distinguished from merely isolated findings or a diagnosis including the word “Chronic.” When the disease identity is established (leprosy, tuberculosis, multiple sclerosis, etc.), there is no requirement of evidentiary showing of continuity. Continuity of symptomatology is required only where the condition noted during service (or in the presumptive period) is not, in fact, shown to be chronic or where the diagnosis of chronicity may be legitimately questioned. When the fact of chronicity in service is not adequately supported, then a showing of continuity after discharge is required to support the claim.

Readers Digest Version

- *Chronicity and continuity:* If a **Chronic** Condition is diagnosed in service, or within the presumptive periods given in 3.307, and not service connected at the time, can be service connected at a later date, regardless of how long its been.
- If the condition was not diagnosed as Chronic in service or within the presumptive period, the evidence must show continuity, (continuing since service or the presumptive period).

Presumptive Condition

- (c) *Preservice disabilities noted in service.* There are medical principles so universally recognized as to constitute fact (clear and unmistakable proof), and when in accordance with these principles existence of a disability prior to service is established, no additional or confirmatory evidence is necessary. Consequently with notation or discovery during service of such residual conditions (scars; fibrosis of the lungs; atrophies following disease of the central or peripheral nervous system; healed fractures; absent, displaced or resected parts of organs; supernumerary parts; congenital malformations or hemorrhoidal tags or tabs, etc.) with no evidence of the pertinent antecedent active disease or injury during service the conclusion must be that they preexisted service. Similarly, manifestation of lesions or symptoms of chronic disease from date of enlistment, or so close thereto that the disease could not have originated in so short a period will establish preservice existence thereof. Conditions of an infectious nature are to be considered with regard to the circumstances of the infection and if manifested in less than the respective incubation periods after reporting for duty, they will be held to have preexisted service. In the field of mental disorders, personality disorders which are characterized by developmental defects or pathological trends in the personality structure manifested by a lifelong pattern of action or behavior, chronic psychoneurosis of long duration or other psychiatric symptomatology shown to have existed prior to service with the same manifestations during service, which were the basis of the service diagnosis will be accepted as showing preservice origin. Congenital or developmental defects, refractive error of the eye, personality disorders and mental deficiency as such are not diseases or injuries within the meaning of applicable legislation.

Readers Digest Version

- Based on medical principles so universally recognized as to constitute fact (clear and unmistakable proof), and when in accordance with these principles existence of a disability prior to service is established, no additional or confirmatory evidence is necessary.
- (Example) The soldier is diagnosed and later dies on day 5 in basic training of a brain tumor the size of a grapefruit, the condition is not related to service.

Presumptive Condition

- (d) *Postservice initial diagnosis of disease.* Service connection may be granted for any disease diagnosed after discharge, when all the evidence, including that pertinent to service, establishes that the disease was incurred in service. Presumptive periods are not intended to limit service connection to diseases so diagnosed when the evidence warrants direct service connection. The presumptive provisions of the statute and Department of Veterans Affairs regulations implementing them are intended as liberalizations applicable when the evidence would not warrant service connection without their aid

Readers Digest Version

- 1 month after a 20 year retirement, the veteran was diagnosed with a brain tumor the size of a grapefruit. The condition is presumed to have been there in service, but not diagnosed.

Presumptive Conditions

- Prisoners of War
- Vietnam Veterans (Agent Orange)
- Atomic Veterans (Ionizing Radiation)
- Gulf War Veterans (Undiagnosed Illnesses)
- Veterans diagnosed with a chronic health conditions within one year of separation from active duty
- Veterans who serve 90 days of continuous active duty service who develop amyotrophic lateral sclerosis (ALS) or Lou Gehrig's disease

Former Prisoners of War

(1) Imprisoned for any length of time, ***and*** disability at least 10 percent disabling:

- Psychosis
- Any of the anxiety states
- Dysthymic disorder
- Cold injury
- Post-traumatic osteoarthritis
- Heart disease and its complications
- Stroke and its complications
- Osteoporosis

Former Prisoners of War(2)

Imprisoned for at least 30 days, ***and*** disability at least 10 percent disabling:

- Avitaminosis
- Pellagra
- Beriberi
- Malnutrition including optic atrophy
- Any other nutritional deficiency
- Chronic dysentery
- Helminthiasis
- Irritable bowel syndrome
- Cirrhosis of the liver
- Peptic ulcer disease
- Peripheral neuropathy

Presumptive Conditions

- **§3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.**
- **The above reference will provide an explanation of the specific requirements for presumptive conditions**

Agent Orange Exposure

- **Veterans who may have been exposed:**

- Exposure on land in Vietnam or on a ship operating on the inland waterways of Vietnam between January 9, 1962 and May 7, 1975
- Exposure along the demilitarized zone in Korea between April 1, 1968 and August 31, 1971

- **Other possible groups of Veterans:**

- Blue Water Veterans: Blue Water Veterans must have actually stepped foot on the land of Vietnam or served on its inland waterways anytime between January 9, 1962 and May 7, 1975 to be presumed to have been exposed to herbicides when claiming service-connection (exception Non-Hodgkin's lymphoma)
- Thailand Military Bases: Possible exposure on or near the perimeters of military bases between February 28, 1961 and May 7, 1975
- Herbicide Tests and Storage: Possible exposure due to herbicide tests and storage at military bases in the United States and locations in other countries

Agent Orange Related Conditions - *Cancers*

- **Chronic B-cell Leukemias**

A type of cancer which affects white blood cells. VA's regulation recognizing all chronic B-cell leukemias as related to exposure to herbicides took effect on October 30, 2010.

- **Hodgkin's Disease**

A malignant lymphoma (cancer) characterized by progressive enlargement of the lymph nodes, liver, and spleen, and by progressive anemia.

- **Multiple Myeloma**

A cancer of plasma cells, a type of white blood cell in bone marrow.

Agent Orange Related Cancers

- **Non-Hodgkin's Lymphoma**

A group of cancers that affect the lymph glands and other lymphatic tissue.

- **Prostate Cancer**

Cancer of the prostate; one of the most common cancers among men.

- **Respiratory Cancers**

Cancers of the lung, larynx, trachea, and bronchus.

- **Soft Tissue Sarcoma (other than Osteosarcoma, Chondrosarcoma, Kaposi's sarcoma, or Mesothelioma)**

A group of different types of cancers in body tissues such as muscle, fat, blood and lymph vessels, and connective tissues

Agent Orange Related Health Conditions

- **Diabetes Mellitus (Type 2)**
A disease characterized by high blood sugar levels resulting from the body's inability to respond properly to the hormone insulin.
- **Ischemic Heart Disease**
A disease characterized by a reduced supply of blood to the heart, that leads to chest pain. VA's regulation recognizing ischemic heart disease as related to exposure to herbicides took effect on October 30, 2010.
- **Parkinson's Disease**
A progressive disorder of the nervous system that affects muscle movement. VA's regulation recognizing Parkinson's disease as related to exposure to herbicides took effect on October 30, 2010.

Agent Orange Related Health Conditions

- **AL Amyloidosis**

A rare disease that occurs when there is an abnormal accumulation of the amyloid protein in the body's tissues or organs.

- **Spina Bifida in children of Veterans**

Children who have spina bifida (except spina bifida occulta) and meet the following requirements may be eligible for VA compensation, health care, and vocational training:

Are biological children of Veterans who served:

- In Vietnam during the period from January 9, 1962 through May 7, 1975, **or**
- In or near the Korean demilitarized zone between September 1, 1967 and August 31, 1971 and were exposed to herbicides. Veterans who served in a unit in or near the Korean demilitarized zone (DMZ) anytime between April 1, 1968 and August 31, 1971 are presumed to have been exposed to herbicides.
- Were conceived after the date on which the Veteran first entered Vietnam or the Korean demilitarized zone during the qualifying service period

Agent Orange Related Conditions - *Birth Defects in Children of Women Vietnam Veterans*

- Achondroplasia
- Cleft lip and cleft palate
- Congenital heart disease
- Congenital talipes equinovarus (clubfoot)
- Esophageal and intestinal atresia
- Hallerman-Streiff syndrome
- Hip dysplasia
- Hirschprung's disease (congenital megacolon)
- Hydrocephalus due to aqueductal stenosis
- Hypospadias
- Imperforate anus
- Neural tube defects
- Poland syndrome
- Pyloric stenosis
- Syndactyly (fused digits)
- Tracheoesophageal fistula
- Undescended testicle
- Williams syndrome

Agent Orange-Time limited conditions

- **Acute and Subacute Peripheral Neuropathy**
A nervous system condition that causes numbness, tingling, and motor weakness. Under VA's rating regulations, it must be at least 10% disabling within 1 year of exposure to herbicides and resolve within 2 years after the date it began.
- **Chloracne (or Similar Acneform Disease)**
A skin condition that occurs soon after exposure to chemicals and looks like common forms of acne seen in teenagers. Under VA's rating regulations, chloracne (or other acneform disease similar to chloracne) must be at least 10% disabling within 1 year of exposure to herbicides.
- **Porphyria Cutanea Tarda**
A disorder characterized by liver dysfunction and by thinning and blistering of the skin in sun-exposed areas. Under VA's rating regulations, it must be at least 10% disabling within 1 year of exposure to herbicides.

Radiation Exposure

- Currently, there are 21 radiogenic diseases subject to **presumptive** service connection in both live and death cases under 38 CFR 3.309(d).
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- *Public Law (PL) 100-321*, enacted May 1, 1988, initially established a presumption of service connection for 13 disabilities. Eight additional disabilities were added following this original legislation.
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- Prior to August 14, 1991, the presumption of service connection applied only to Veterans exposed to ionizing radiation while on active duty.
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- *PL 102-86*, enacted August 14, 1991, extended the presumption of service connection to include persons exposed while on active duty for training or inactive duty for training.

Who is Eligible

- **Presumptive** service connection for the diseases listed in [38 CFR 3.309\(d\)\(2\)](#) is available to Veterans involved in the radiation-risk activities specified in [M21-1MR, Part IV, Subpart ii, 1.B.4.a](#). Veterans are eligible based on participation in a radiation-risk activity while serving on
 - active duty
 - active duty for training, or
 - inactive duty training.

Ionizing Radiation Exposure

- **Veterans who may have been exposed:**

- Participated in occupation of Hiroshima and Nagasaki, Japan between August 6, 1945 and July 1, 1946.
- Prisoners of war in Japan during World War II.
- Participated in atmospheric nuclear testing (conducted primarily in Nevada and Pacific Ocean between 1945 and 1962).
- Participated in underground nuclear weapons testing at:
 - Amchitka Island, AK before January 1, 1974
- Served at one of the following gaseous diffusion plants for at least 250 days before February 1, 1992
 - Paducah, KY
 - Portsmouth, OH
 - Oak Ridge, TN

Ionizing Radiation Exposure

- **Other Groups:**

- Nasopharyngeal (NP) radium irradiation treatments were administered to certain pilots, submariners, and divers to prevent ear damage from pressure changes.
- Depleted uranium exposure: by-product of the uranium enrichment process and used by the military for tank armor and some bullets.
- Military Occupational Exposures:
 - Navy Veterans who served on nuclear submarines or other nuclear ships
 - Veterans involved in nuclear weapons handling and maintenance including clean-ups after accidents
 - Veterans who served as X-ray or dental technicians
 - Veterans who received radiation therapy during military service

Ionizing Radiation-Presumptive Conditions

- Cancers involving:
 - Bile ducts
 - Bone
 - Brain
 - Breast
 - Colon
 - Esophagus
 - Gall bladder
 - Liver (primary site but not if cirrhosis or hepatitis B is indicated)
 - Lung
 - Pancreas
- Pharynx
- Ovary
- Salivary gland
- Small intestine
- Stomach
- Thyroid
- Urinary tract
- Leukemia (except chronic lymphocytic leukemia)
- Lymphomas (except Hodgkin's disease)
- Multiple myeloma

Ionizing Radiation- Other Diseases

- If a Veteran was exposed to radiation during military service and develops one of the below conditions, he/she may be eligible for disability benefits (decided on case by case basis):
 - All cancers
 - Non-malignant thyroid nodular disease
 - Parathyroid adenoma
 - Posterior subcapsular cataracts
 - Tumors of the brain and central nervous system

Where are they processed

- In October 2006, the Department of Veterans Affairs (VA) centralized the processing of all claims for service connection based on radiation exposure at the Jackson Regional Office (RO).
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- The Jackson RO is responsible for developing and resolving
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- • all claims for service connection for **presumptive** disabilities resulting from exposure to ionizing radiation under 38 CFR 3.309(d), and
- • all non radiation-related claims received while the radiation issue is pending.

Gulf War Exposure Concerns

- Vaccinations
- Burning oil wells
- Depleted uranium
- Pyridostigmine bromide tablets
- Infectious disease
- Industrial solvents/lubricants
- Chemical and biological warfare agents
- Harsh living conditions
- Contaminated food or water
- Pesticides

Gulf War Service

For VA benefit purposes, Gulf War service is active duty military duty in any of the following areas in the **Southwest Asia theater of military operations** any time during the first Gulf War starting August 2, 1990 through the current conflict in Iraq.

- Iraq
- Kuwait
- Saudi Arabia and the neutral zone between Iraq and Saudi Arabia
- Bahrain
- Qatar
- The United Arab Emirates
- Oman
- Gulf of Aden, Gulf of Oman, and the waters of the Persian Gulf, the Arabian Sea, and the Red Sea
- The airspace above these locations

Gulf War-Presumptive Conditions

- **Infectious Diseases (related to Service in Gulf War, Iraq, or Afghanistan):**
- **Malaria**
An infectious disease caused by a parasite. Symptoms include chills, fever, and sweats. It must be at least 10% disabling within 1 year from the date of military separation or at a time when standard or accepted treatises indicate that the incubation period began during a qualifying period of military service.
- **Brucellosis**
A bacterial disease with symptoms such as profuse sweating and joint and muscle pain. The illness may be chronic and persist for years. It must be at least 10% disabling within 1 year from the date of military separation.
- **Campylobacter Jejuni**
A disease with symptoms such as abdominal pain, diarrhea, and fever. It must be at least 10% disabling within 1 year from the date of military separation.

Gulf War-Presumptive Conditions

- **Infectious Diseases (related to Service in Gulf War, Iraq, or Afghanistan):**

- **Coxiella Burnetii (Q Fever)**

A bacterial disease with symptoms such as fever, severe headache, and gastrointestinal problems such as nausea and diarrhea. In chronic cases, the illness may cause inflammation of the heart. It must be at least 10% disabling within 1 year from the date of military separation.

- **Mycobacterium Tuberculosis**

An illness that primarily affects the lungs and causes symptoms such as chest pain, persistent cough (sometimes bloody), weight loss and fever.

- **Nontyphoid Salmonella**

A condition characterized by symptoms such as nausea, vomiting, and diarrhea. It must be at least 10% disabling within 1 year from the date of military separation

Gulf War-Presumptive Conditions

- **Infectious Diseases (related to Service in Gulf War, Iraq, or Afghanistan):**
- **Shigella**
A condition characterized by symptoms such as fever, nausea, vomiting, and diarrhea. It must be at least 10% disabling within 1 year from the date of military separation.
- **Visceral Leishmaniasis**
A parasitic disease characterized by symptoms such as fever, weight loss, enlargement of the spleen and liver, and anemia. The condition may be fatal if left untreated.
- **West Nile Virus**
A disease spread by mosquitoes characterized by symptoms such as fever, headache, muscle pain or weakness, nausea, and vomiting. Symptoms may range from mild to severe. It must be at least 10% disabling within 1 year from the date of military separation.

Gulf War-Medically Unexplained Chronic Symptoms

- A condition that may affect some Gulf War Veterans is a cluster of medically unexplained chronic symptoms that can include fatigue, headaches, joint pain, indigestion, insomnia, dizziness, respiratory disorders, and memory problems.
- VA does not use “Gulf War Syndrome”- “Medically unexplained chronic multisymptom illnesses” is used to describe illnesses reported by Gulf War Veterans.
- VA presumes certain chronic, unexplained symptoms existing for 6 months or more are related to Gulf War service without regard to cause. These "presumptive" illnesses must have appeared during active duty in the Southwest Asia theater of military operations or by December 31, 2011 **and** be at least 10 percent disabling

Gulf War-Medically Unexplained Chronic Symptoms

- **Chronic Fatigue Syndrome**, a condition of long-term and severe fatigue that is not relieved by rest and is not directly caused by other conditions.
- **Fibromyalgia**, a condition characterized by widespread muscle pain. Other symptoms may include insomnia, morning stiffness, headache, and memory problems.
- **Irritable Bowel Syndrome (IBS)**, a condition of the large intestine that can cause abdominal cramping, changes in bowel habits, and other symptoms.
- **Undiagnosed illnesses** with symptoms that may include but are not limited to: abnormal weight loss, fatigue, cardiovascular disease, muscle and joint pain, headache, menstrual disorders, neurological and psychological problems, skin conditions, respiratory disorders, and sleep disturbances.

Presumptive conditions based on Continuity of Symptoms

- Service connection may be established based on continuity of symptoms when a disease noted in service, or within the **presumptive** period of [38 CFR 3.307](#)
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- is not shown to be chronic, or
- a diagnosis of chronicity is questionable.
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- **Note:** When evidence shows that symptoms that began during service have continued after discharge, a medical opinion is generally not required to establish a link between the claimed disability and the Veteran's service.
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- **Reference:** For more information on continuity of symptoms, see [38 CFR 3.303\(b\)](#).

Presumptive Conditions List

- **§3.309 Disease subject to presumptive service connection.**
- This section provides an inclusive list of medical conditions the VA can consider as presumptive conditions.

Questions?

